

MT LEGISLATIVE HISTORY

Chapter 234 1977

Bill H S 40

Original bill & hist. ☒ C

H. Committee on Judiciary

S. Committee on Judiciary

Hearing Date(s) Mar 08 ☒ C

Hearing Date(s) Jan 12 ☒ C

Mar 09 ☒ C

Jan 20 ☒ C

Mar 10 ☒ C

 ☐ C

 ☐ C

 ☐ C

Date Out ☐ C

Jan 20 ☒ C

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee

Report

1 *Senate* BILL NO. *40*
 2 INTRODUCED BY *Dave Turnage*
 3 *(Interim Judiciary Committee Bill)*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT REMOVING AND CLARIFYING
 5 STATUTORY REFERENCES TO SOVEREIGN OR GOVERNMENTAL IMMUNITY
 6 TO COORDINATE THOSE REFERENCES WITH ARTICLE II, SECTION 18,
 7 OF THE CONSTITUTION OF THE STATE OF MONTANA OR PROVISIONS OF
 8 TITLE 82, CHAPTER 43, R.C.M. 1947, AS AMENDED; AMENDING
 9 SECTIONS 1-502, 16-1802, 17-205, 32-4722, 40-4401, 40-4402,
 10 75-8310, AND 93-2815, R.C.M. 1947; AND REPEALING SECTIONS
 11 11-1305, 11-1306, 16-2731, 16-2732, 16-2733, 31-172,
 12 69-6405, 75-5940, AND 76-243, R.C.M. 1947."

13
 14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 15 Section 1. Section 1-502, R.C.M. 1947, is amended to
 16 read as follows:

17 "1-502. Aeronautics functions governmental -- no
 18 liability for torts. ~~††~~ The acquisition of lands for
 19 establishing airports or other air navigation facilities;
 20 the acquisition of airport protection privileges; the
 21 acquisition, establishment, construction, enlargement,
 22 improvement, maintenance, equipment, and operation of
 23 airports and other air navigation facilities whether by the
 24 state separately or jointly with a municipality; the
 25 assistance of this state in that acquisition, establishment,

1 construction, enlargement, improvement, maintenance,
 2 equipment, and operation; and the exercise of any other
 3 powers granted to the department are public and governmental
 4 functions, exercised for a public purpose, and matters of
 5 public necessity, and such lands and other property and
 6 privileges acquired and used by the state in the manner and
 7 for the purposes enumerated in this title are acquired and
 8 used for public and governmental purposes and as a matter of
 9 public necessity.

10 ~~†2† No suit in tort may be brought or maintained~~
 11 ~~against the state or any municipality of the state or their~~
 12 ~~officers, agents, servants, or employees on account of an~~
 13 ~~act done in or about the construction, maintenance,~~
 14 ~~enlargement, operation, superintendence, or management of an~~
 15 ~~airport or other air navigation facility."~~

16 Section 2. Section 16-1802, R.C.M. 1947, is amended to
 17 read as follows:

18 "16-1802. Claims to be itemized -- time for
 19 presenting. No account must be allowed by the board unless
 20 the same is made out in separate items, the nature of each
 21 item stated; if it is for official services for which no
 22 specified fees are fixed by law, the time actually and
 23 necessarily devoted to such service must be stated. Claims
 24 against the county shall contain the following statement: "I
 25 certify that this claim is correct and just in all respects,

1 and that payment or credit has not been received." Claims
 2 need not be verified by affidavit. Every claim against the
 3 county, except claims arising from injury to a person or
 4 property, which are limited under provisions of Title 82,
 5 chapter 43, as amended, must be presented within a year
 6 after the last item accrued."

7 Section 3. Section 17-205, R.C.M. 1947, is amended to
 8 read as follows:

9 "17-205. In actions other than contract. In an action
 10 for the breach of an obligation not arising from contract,
 11 and in every case of oppression, fraud, or malice, interest
 12 may be given, in the discretion of the jury. This section
 13 does not apply in actions for recovery of damages arising
 14 from injury to a person or property brought against a
 15 governmental entity under Title 82, chapter 43, as amended."

16 Section 4. Section 32-4722, R.C.M. 1947, is amended to
 17 read as follows:

18 "32-4722. Advertising deemed unlawful -- notice to
 19 remove -- hearing -- appeal to district court. (1) The
 20 following outdoor advertising is unlawful:

21 (a) When when erected after June 24, 1971, contrary to
 22 this act, or erected after the effective date of this act
 23 beyond ~~six--hundred-sixty~~{660} feet of the nearest edge of
 24 the right-of-way of an interstate or primary highway outside
 25 of an urban area with the purpose of its message being read

1 from such ~~main-traveled~~ main-traveled way and visible from
 2 such ~~main-traveled~~ main-traveled way, unless such outdoor
 3 advertising meets the criteria of subsections (i), (ii), or
 4 (iii) of subsection (a) of section 32-4717; or

5 (b) When when a permit is not obtained as prescribed
 6 in this act; or

7 (c) When when a permittee fails to comply with a
 8 notice of violation as provided in section 32-4721.

9 (2) The department shall give notice in writing,
 10 either by certified mail or by personal service, to the
 11 owner or occupant of the land on which advertising believed
 12 to be unlawful is located and to the owner of the outdoor
 13 advertising structure, if the latter is known, or if
 14 unknown, by posting notice in a conspicuous place on the
 15 structure, of its intention to remove the unlawful
 16 advertising. Within ~~forty-five~~{45} days after the notice,
 17 the owner of the land or of the structure may make a written
 18 request for a hearing before the commission to show cause
 19 why the structure should not be removed.

20 (3) If a hearing before the commission is not
 21 requested, or if there is no appeal taken from the
 22 commission's decision at the hearing, or if the commission's
 23 decision is affirmed on appeal, the department shall
 24 immediately remove, or cause to be removed, the unlawful
 25 outdoor advertising. The owner of the structure and the

1 owner or occupant of the land are jointly and severally
 2 liable for the costs of the removal. The department may
 3 enter upon lands bearing outdoor advertising and make
 4 examination of such advertising. The department may, upon
 5 final determination by the commission that an item of
 6 outdoor advertising is unlawful, enter upon lands bearing
 7 such advertising and remove the unlawful advertising. ~~The~~
 8 ~~department--incurs--no--liability--for--the--entry--or--entries~~
 9 ~~except--for--injuries--resulting--from--negligence--wantonness--or~~
 10 ~~malice."~~

11 Section 5. Section 40-4401, R.C.M. 1947, is amended to
 12 read as follows:

13 "40-4401. Waiver of defense of sovereign immunity
 14 required. All contracts or policies of casualty insurance
 15 covering state-owned properties or state risks must contain
 16 ~~therein--as--a--part--thereof~~ an agreement on the part of the
 17 insurer waiving all right to raise the defense of sovereign
 18 immunity from suit. No money ~~shall~~ may be paid out of the
 19 state treasury to any person, firm, or corporation as a
 20 consideration or premium on any such policy or contract of
 21 casualty insurance unless the policy or contract contains
 22 such an agreement."

23 Section 6. Section 40-4402, R.C.M. 1947, is amended to
 24 read as follows:

25 "40-4402. Sovereign---immunity Immunity defense

1 prohibited when liability insured -- reduction of award to
 2 policy limits. Whenever an insurer accepts any premium,
 3 money, or other consideration from a political subdivision
 4 of the state, municipality, or any public body, corporation,
 5 commission, board, agency, organization, or other public
 6 entity for casualty or liability insurance, neither such
 7 insured nor insurer ~~shall~~ may raise the defense of sovereign
 8 ~~or--governmental~~ immunity from suit in any damage action
 9 brought against such insured or insurer, and any agreement
 10 in the insurance contract permitting the defense of
 11 ~~sovereign--or--governmental~~ immunity is hereby declared void.
 12 No attempt ~~shall~~ may be made in the trial of an action
 13 brought against such political subdivision of the state,
 14 municipality, or any public body, corporation, commission,
 15 board, agency, organization, or other public entity to
 16 suggest the existence of any insurance which covers in whole
 17 or in part any judgment or award which may be rendered in
 18 favor of plaintiff. If the court ~~shall~~ determine
 19 that the defendant could have successfully raised the
 20 defense of ~~sovereign--or--governmental~~ immunity, and if the
 21 verdict exceeds the limits of the applicable insurance, the
 22 court shall reduce the amount of such judgment or award to a
 23 sum equal to the applicable limit stated in the policy."

24 Section 7. Section 75-8310, R.C.M. 1947, is amended to
 25 read as follows:

1 *75-8310. School safety patrols. ~~(1)~~ The trustees of
 2 any district or the administration of any private school
 3 ~~shall have the authority to~~ may organize and supervise
 4 school safety patrols for a school under their authority.
 5 The purpose of school safety patrols ~~shall be~~ is to
 6 influence and encourage other pupils of the school to
 7 refrain from crossing public highways at points other than
 8 regular crossings and to direct pupils as to when and where
 9 to cross highways.

10 (2) The school safety patrol shall be formed from the
 11 children of the school who are nine ~~(9)~~ years of age or more
 12 or, if there are none, who are of the highest grade of such
 13 school. Before any child may serve on the school safety
 14 patrol, the parent or guardian of such child shall give
 15 written consent for his child to serve on the school safety
 16 patrol.

17 (3) No liability ~~shall attach either attaches~~ to the
 18 ~~school, educational institution, governing board, directing~~
 19 ~~authority, a member of the school safety patrol~~ or parent or
 20 guardian, ~~or any individual, director, member of the~~
 21 ~~trustees, district, superintendent, principal, teacher, or~~
 22 ~~other school authority~~ by virtue of the organization,
 23 maintenance, or operation of such school safety patrol
 24 because of injuries injury sustained by any pupil, whether a
 25 member of the patrol or otherwise by reason of the operation

1 and maintenance thereof unless that injury results from
 2 gross negligence or purposeful conduct of such person.

3 (4) Identification and operation of school safety
 4 patrols shall be uniform throughout the state and the method
 5 of identification and signals to be used shall be as
 6 prescribed by the superintendent of public instruction in
 7 cooperation with the Montana highway patrol.

8 (5) Any municipality, city, or town of this state may
 9 provide for the training of members of the school safety
 10 patrol at any authorized school patrol camp located in this
 11 state and may pay the expense necessarily incurred in
 12 providing such training out of any funds available for such
 13 purpose."

14 Section 8. Section 93-2815, R.C.M. 1947, is amended to
 15 read as follows:

16 *93-2815. Joinder of state as defendant in certain
 17 actions. In any action or proceeding brought in any district
 18 court of the state of Montana affecting the title to real or
 19 personal property in which the state of Montana has or
 20 claims to have an interest or claim, the state of Montana
 21 may be made a party defendant to such actions or
 22 proceedings, and its rights or interests adjudicated
 23 ~~provided, however, that in no event shall any money judgment~~
 24 ~~be rendered against the state of Montana in any action or~~
 25 ~~proceeding brought under the provisions of this act."~~

- 1 Section 9. Repealer. Sections 11-1305, 11-1306,
- 2 16-2731, 16-2732, 16-2733, 31-172, 46-243, 69-6405, and
- 3 75-5940, R.C.M.1947, are repealed.

-End-

1977

COMMITTEE ON

JUDICIARY

BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS <u>DATE</u>	DO NOT PASS <u>DATE</u>	DO PASS AS AMEND. <u>DATE</u>	BE CON- CURRED IN <u>DATE</u>	BE CONC. IN AS AMENDED <u>DATE</u>	BE NOT CON- CURRED IN <u>DATE</u>
S.B. 9	1-3-77	1-11-77	1-15-77			1-15-77			
S.B. 12	1-3-77	2-16-77	2-18-77			2-18-77			
S.B. 20	1-3-77	1-7-77	1-7-77			1-7-77			
S.B. 23	1-11-77	1-18-77	1-29-77		1-29-77				
S.B. 23	Rereferred 2-1-77	2-4-77				2-4-77			
S.B. 27	1-3-77	1-11 & 1-14-77	2-17-77			2-17-77			
S.B. 30	1-3-77	1-11, 1-13, 1-17-77	1-17-77			1-20-77			
S.B. 32	1-3-77	Duplicate of S.B. 40	2-10-77		2-10-77				
S.B. 33	1-3-77	1-11 & 1-14-77	2-17-77			2-17-77			
S.B. 34	1-3-77	1-17, 1-18, 1-28, 1-29-77	1-31-77			1-31-77			
S.B. 37	1-4-77	1-14-77	2-10-77			2-10-77			
S.B. 40	1-5-77	1-12-77	1-20-77	1-20-77					
S.B. 41	1-5-77	1-12 & 1-20-77	2-18-77			2-18-77			
S.B. 42	1-5-77	1-12 & 1-20-77	1-20-77	1-20-77					
S.B. 43	1-5-77	1-12 & 1-20-77	1-20-77			1-20-77			
S.B. 53	1-6-77	1-12 & 1-20-77	1-20-77	1-20-77					

(Use Separate Sheet for Senate, House Bills, and Resolutions)

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
January 12, 1977

The meeting of the Judiciary Committee was called to order by Chairman Jean Turnage on the above date in Room 442 of the State Capitol Building.

ROLL CALL:

All members were present with the exception of Senator Roberts who was excused. Senator Warden was excused at 10:00 a.m. as she had to testify at another meeting.

The following witnesses were present to testify: ✓

Representative John Vincent - District 78
Glen Drake, Helena attorney - Montana League of Cities and Towns and the American Insurance Association
Gregg McCurdy - Montana Association of Counties
W. Boyce Clarke - Independent Insurance Agents of Montana
Arnold Kuenning - Insurance Consultant representing the Independent Insurance Agents of Montana and the Mutual Agents of Montana
Mike Young, Attorney - Department of Administration
Bob Biggerstaff - Montana Association of Conservation Districts
Gregg Morgan, Bozeman attorney - Montana State Bar Association
Robert Corcoran, Chief Tax Counsel - Montana Department of Revenue
William L. Romine - Montana attorney
John Bell, Helena - attorney

CONSIDERATION OF SENATE BILLS 40, 41, 42, 43 and 53:

Senator Towe requested that the bills be taken up in the following order: S.B. 43, 53, 41, 42 and 40. The request was granted by Chairman Turnage. Sen. Towe noted S.B. 32 is identical to S.B. 40.

Senator Towe then explained each bill in the above order. While doing this, he told the committee that these bills, in order to pass, would require a two-thirds vote by each House. This is an exception to the general rule governing sovereign immunity.

Representative Vincent, appearing as a proponent of S.B. 43, stated that he supported this bill with one exception and that is relative to the limits in subsection (b) on pages 4 and 5. He offered the committee two suggested alternatives which he thought would improve the bill. He was then thanked by the Chairman for his testimony.

Other proponents of the bills appearing and offering testimony to the committee were:

Glen Drake, Helena attorney, representing the American Insurance Association and the Montana League of Cities and Towns;

Gregg McCurdy, representing the Montana Association of Counties, who had one question on S.B. 43, page 5, line 3, regarding the words "taxing districts";

W. Boyce Clarke, representing the Independent Insurance Agents of Montana, who presented a prepared statement on each bill to the committee (see attached). Mr. Clarke also commended the subcommittee and their staff on doing a very good job on these bills.

Arnold Kuenning, an Insurance Consultant representing the Independent Insurance Agents of Montana and the Mutual Agents of Montana. Mr. Kuenning presented the committee with a prepared statement. (See attachment)

Mike Young, Attorney for the Montana Department of Administration;

Bob Biggerstaff, representing the Montana Association of Conservation Districts, who said that they are proponents but are concerned that they might not be included.

Gregg Morgan of the State Bar Association said that they wished to applaud the committee and support the work done.

Opponents appearing were:

Bob Corcoran, representing Bill Groff, Director of the Department of Revenue, who said the Department of Revenue was concerned with a couple of items in the bills, namely, in Title 84 the portion referring to claims of refunds of taxes and the portion on quiet title actions in S.B. 40. Senator Towe said that was just a deletion of language.

Bill Romine, attorney, representing only himself. Mr. Romine presented the committee with a prepared statement on S.B. 41. (Attached)

At this time, Gregg Morgan of the State Bar of Montana testified before the committee, suggesting amendments or withdraw S.B. 41 as it may be unconstitutional as a breach of contract. (See Exhibit 1)

John Bell, a Helena attorney who said he believes S.B. 41 is clearly unconstitutional.

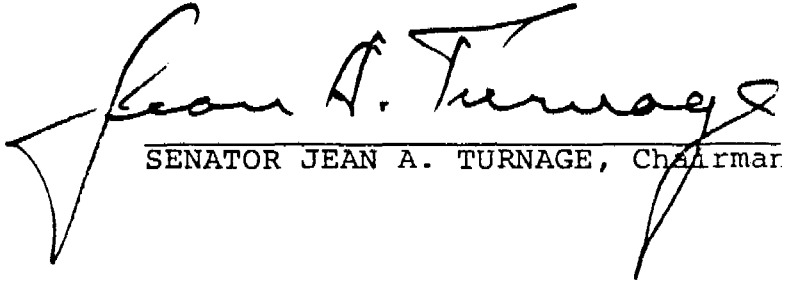
Mike Young, Attorney for the Montana Department of Administration at this time said that his previous comments were only in regard to S.B. 43, 53 and 40.

At this time, Chairman Turnage explained S.B. 41, stating that it was the last bill worked up by the subcommittee, and that the committee should hear from the bill's originator, Rep. Herb Huennekens, on it.

Senator Towe told the committee that he definitely thanked the researchers who worked on this and that the study is a great credit to the Legislative Council and its staff.

The Chairman asked for questions of committee members.

There being no further business, the committee adjourned at 10:47 a.m. to reconvene January 13, 1977, at 9:30 a.m. in Room 442.


SENATOR JEAN A. TURNAGE, Chairman

ROLL CALL

JUDICIARY COMMITTEE

45th LEGISLATIVE SESSION - - 1977

Date 1/12/77

NAME	PRESENT	ABSENT	EXCUSED
TURNAGE, Jean, Chairman	✓	—	
ROBERTS, Joe, Vice-Chairman	✓	—	Exc 62
MURRAY, William	✓		
OLSON, Stuart	✓		
LENSINK, Everett	✓		
REGAN, Pat	✓		
TOWE, Tom	✓		
WARDEN, Margaret	✓		Exc 62 10:00

Each day attach to minutes.

DATE 1-1-68

COMMITTEE ON _____ BILL NO. _____

BILL NO. 500

VISITOR'S REGISTER

NAME	REPRESENTING	Check One	
		Support	Oppose
B. J. Kirk	Free Trade		
Greg McCurdy ✓	Montana Assn. of Counties ✓	X	
Wm. B. G. Stettin ✓	MT Assn. of Conservation Districts		
John Bell ✓	self		X
John Drake ✓	American Ins. Assn. & League of Cities & Towns	X	
William J. Reame ✓	self (S.B. 41)		X
Greg Morgan ✓	State Bd. of Education		
O. E. Schenning ✓	Public Risk Bd.	X	
James H. H. ✓	Indemnity Insurance Co. of MT		
W. E. Edmann	State Auditor, Dept. of Insurance		
John J. Gentry ✓	Dept. of Agriculture	✓	
John H. Hansen ✓	Dept. of Administration		
W. J. Carson ✓	Dept. of Rev.		
Frank H. Smith	Mont. H. Bd. of Comm. & Y.A.I.A.		

(Please leave prepared statement with Secretary)

SENATE BILL NO. 40

COMMENT:

REPRESENTING INDEPENDENT INSURANCE AGENTS OF MONTANA, WE CONCUR WITH
FINDINGS OF THE SUB-COMMITTEE AND RECOMMEND PASSAGE.



W. BOYCE CLARKE, LEGISLATIVE COUNSEL
INDEPENDENT INSURANCE AGENTS OF MONTANA

Chairman Turnage asked her if she had seen Senate Bill 58. Ms. Dieziger said that she did not feel it covered everything contained in S.B. 95.

There were no opponents to this bill present.

In answer to questions of the Chairman regarding the definition of peer review committee and audit committee, Mary Mouat of St. Peters Hospital and the Montana Nurses Assn., said that a peer review committee deals with somebody within your own profession and that the audit committee is one set up to deal with specific problems and would set certain standards of care. She further testified that the audit committee is not covered by a peer review committee.

At this time, Chairman Turnage told the witnesses that the committee would ask for the return of Senate Bill 58 and try to make one bill which would be acceptable to them. He assigned Senators Olsen and Lensink to work on this matter. The witnesses were then thanked for appearing and excused.

DISPOSITION OF SENATE BILLS 40, 41, 42, 43 and 53:

SENATE BILL 43 - Senator Towe moved to amend page 5, section 8, line 4, following "may" by inserting ", in its sole discretion," and following "for" by inserting "noneconomic damages or";

And to further amend page 5, section 8, on line 6, following "section" by inserting ", or both,";

And to further amend page 5, section 8, on line 7, following "judgment." by inserting "No insurer is liable for such noneconomic damages or excess economic damages unless specifically authorized in the contract of insurance."

The above motion carried unanimously.

Senator Towe then moved that Senate Bill 43, as amended, DO PASS. The motion carried unanimously.

SENATE BILL 53 - Senator Towe moved DO PASS. The motion carried unanimously.

SENATE BILL 41 - Senator Lensink moved DO NOT PASS. As a substitute motion, Senator Regan moved to pass consideration for the day. The substitute motion of Senator Regan carried on a vote of 5 - 3. (See attached voting record)

The Chairman assigned a subcommittee of one, namely, Senator Regan, to research S.B. 41 and report back in about ten days.

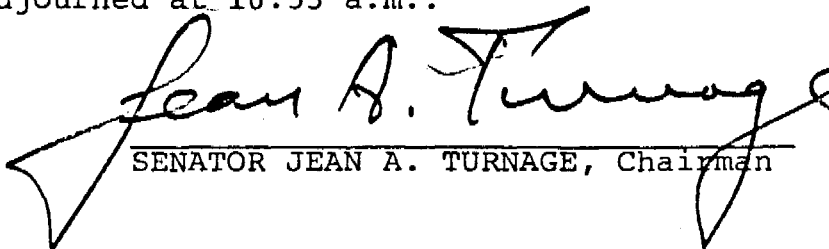
SENATE BILL 40 - Senator Towe moved DO PASS. Motion carried unanimously.

SENATE BILL 42 - Senator Towe moved DO PASS. The motion carried unanimously.

DISPOSITION OF SENATE BILL 56

Senator Towe moved DO NOT PASS. The motion carried with Senator Roberts voting "No".

There being no further business before this committee at this time, the committee adjourned at 10:55 a.m..


SENATOR JEAN A. TURNAGE, Chairman

ROLL CALL

COMMITTEE

45th LEGISLATIVE SESSION - - 1977

Date _____

[illegible]

STANDING COMMITTEE REPORT

January 20, 1977

MR. **PRESIDENT:**

We, your committee on **JUDICIARY**

having had under consideration **SENATE** Bill No. **40**

Respectfully report as follows: That **SENATE** Bill No. **40**

DO PASS

JUDICIARY

COMMITTEE

45th Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
HB 567	to submit to the electors of Mont. an amendment constitution, to remove supreme court jurisdiction over admission to the bar.	1-27	Huennekens	Thursday 3rd	do not pass	2-9
SB 30	to revise and clarify the laws relating to criminal procedure	1-28	Hazelbaker	March 4th	be concurred in	3-7
SB 40	removing & clarifying statutory references to sovereign or governmental immunity to coordinate	1-28	Towe	March 8	amended and concurred in	3-10
HJR 43	urging repeal of the federal water pollution control act	1-28	Fabrega	Thursday 3rd 7 p.m.	"WATER" do pass	2-11
HB 585	amending the definition of pollution, authorizing the bd of health & environmental sciences to change a stream classification, etc.	1-28	Vincent	Friday 4th	do pass	2-9
HB 589	to give justice, municipal & city courts, traffic violations, fish & game etc. and jurisdiction over the youth court	1-28	Williams	Thursday 3rd	do pass as amended	2-9

JUDICIARY COMMITTEE

March 8, 1977

The regular meeting of the House Judiciary Committee was held on Tuesday, March 8 at 7:30 a.m. in room 436 of the Capitol Building, Helena, Montana. Chairmam Scully presided. All members were present with the exception of Representative Colburn.

Scheduled for hearing were Senate Bills 40, 42, 43 and 53.

SENATOR TOWE, sponsor of the bills asked that Senate Bill 41 be included, since it is part of the package of bills. The committee agreed to hear this bill along with the others.

SENATOR TOWE:

These bills are part of the interim study. The new Montana constitution spelled out that there would be no sovereign immunity. He discussed the reason for sovereign immunity and how it came about, the fact that in common law the king could do no wrong. He explained the insurance and the \$25,000 deductible. The bills dealing with constitutional amendments must have 2/3 of the legislature voting in order to pass. He said he felt the approach to drafting the bills was somewhat unique. We are preserving the right to sue, however we are limiting the amount of damages in some instances. Each of the bills does a separate thing which I will explain.

1. #43 is the main bill.
2. #53 is the 2nd bill and involves a self-insurance fund.
3. #41 sets a limit on attorneys fees.
4. #42 reinserts certain portions of the constitution.
5. #40 is a clean-up or repealer.

First, #43. He discussed the tangible and intangible, the economic and non-economic things you can sue for. The non-economic is not allowed for.

#53 is the self-insurance bill. It allows for a deductible self-insurance program and reserve. He explained the sources and stated that if the judgment cannot be paid from these four sources it cannot be paid.

#41 regulates the attorneys fees. The attorney must file a claim. The district court may regulate the amount of the attorneys fee.

#42 concerns the constitutional amendments needed. One of the existing things in the law that allow someone to sue are invalid in the new constitution. They must be reinstated with a 2/3 vote.

#40 repeals and revises certain sections of the law. He went through the bill and explained the general practice of law.

The Senator said that SB 42 and 43 need 2/3 vote in order to pass. He wished to remind the committee of this. The Senator also said they had not found anyone opposed to any of these bills.

March 8, 1977

Page 2

PROPONENT MIKE YOUNG, DEPARTMENT OF STATE ADMINISTRATION:

We would like to thank the committee for the amount of time they have spent. As a practical matter we will still insure for the same amount of money which is 1 million dollars. We favor the bills.

PROPONENT, GLEN DRAKE, LEAGUE OF CITIES & TOWNS, & AMERICAN INSURANCE CORPORATION:

We are in support of the bills.

PROPONENT, GREG MCCURDY:

I am in favor of the bills.

PROPONENT, BOISE CLARK, INDEPENDENT INSURANCE AGENTS:

I would like to reiterate the fine work that has been done by the sub-committee. There are just a couple of comments I want to make. He talked about the study on government liability risks. Attached is a copy of the testimony on each of the bills by Mr. Clark.

REPERSENTATIVE KEYSER:

on page 8 of SB 53, how long can the state or county delay making the payment.

SENATOR TOWE:

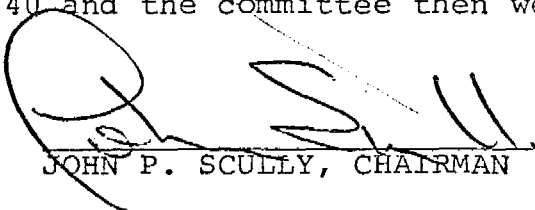
The payment may be delayed but if there is an abuse in any area, we may have to put in an amendment to change that.

REPRESENTATIVE EUDAILY and SENATOR TOWE:

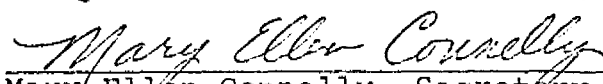
discussion about the special levy up to 10 mills. Discussion about the insurance costs and how the reduced liability might reduce the price.

No further questions the hearing closed on the series of bills.

The meeting adjourned at 8:40 and the committee then went into executive session.



JOHN P. SCULLY, CHAIRMAN



Mary Ellen Connelly, Secretary

JUDICIARY COMMITTEE

Executive session
March 9, 1977

The executive session was held following the regular meeting of the House Judiciary Committee on Wednesday, March 9 in room 436 of the Capitol Building, Helena, Montana at 9:25 a.m. Chairman Scully presided. Members absent and not voting were Representatives Colburn, Kennerly, and McLane.

SENATE BILL #40:

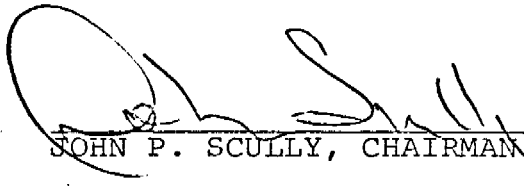
REPRESENTATIVE DUSSAULT moved to amend on page 7 and 8, line 25 and through line 3, to strike in their entirety.

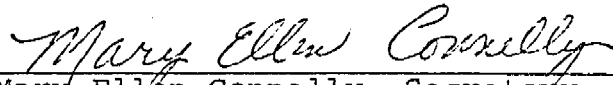
The motion carried with the vote unanimous.

REPRESENTATIVE DUSSAULT moved "be concurred in as amended".

The motion carried with the vote unanimous.

The meeting adjourned at 10:00 a.m. so members could attend other committee meetings.



JOHN P. SCULLY, CHAIRMAN

Mary Ellen Connelly, Secretary

March 10, 1977
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Chairman Scully assigned the following representatives to carry the --
respective senate bills as follows:

Senate Bill 40	Representative Lory
Senate Bill 41	Representative Lory
Senate Bill 42	Representative Lory
Senate Bill 43	Representative Lory
Senate Bill 58	Representative Scully
Senate Bill 119	Representative Keyser
Senate Bill 176	Representative Day
Senate Bill 215	Representative Conroy or Roth

The meeting adjourned at 9:00 a.m. so the water sub-committee could meet.


JOHN P. SCULLY, CHAIRMAN


Mary Ellen Connelly, Secretary

SENATE BILL NO. 40

INTRODUCED BY TOWE, TURNAGE

(INTERIM JUDICIARY COMMITTEE BILL)

A BILL FOR AN ACT ENTITLED: "AN ACT REMOVING AND CLARIFYING STATUTORY REFERENCES TO SOVEREIGN OR GOVERNMENTAL IMMUNITY TO COORDINATE THOSE REFERENCES WITH ARTICLE II, SECTION 18, OF THE CONSTITUTION OF THE STATE OF MONTANA OR PROVISIONS OF TITLE 82, CHAPTER 43, R.C.M. 1947, AS AMENDED; AMENDING SECTIONS 1-502, 16-1802, 17-205, 32-4722, 40-4401, 40-4402, 75-8310, AND 93-2815, R.C.M. 1947; AND REPEALING SECTIONS 11-1305, 11-1306, 16-2731, 16-2732, 16-2733, 31-172, 69-6405, 75-5940, AND 76-243 ~~46-243~~, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 1-502, R.C.M. 1947, is amended to read as follows:

"1-502. Aeronautics functions governmental -- no liability for torts. ~~{1}~~ The acquisition of lands for establishing airports or other air navigation facilities; the acquisition of airport protection privileges; the acquisition, establishment, construction, enlargement, improvement, maintenance, equipment, and operation of airports and other air navigation facilities whether by the state separately or jointly with a municipality; the

assistance of this state in that acquisition, establishment, construction, enlargement, improvement, maintenance, equipment, and operation; and the exercise of any other powers granted to the department are public and governmental functions, exercised for a public purpose, and matters of public necessity, and such lands and other property and privileges acquired and used by the state in the manner and for the purposes enumerated in this title are acquired and used for public and governmental purposes and as a matter of public necessity.

~~{2} No suit in tort may be brought or maintained against the state or any municipality of the state, or their officers, agents, servants, or employees, on account of an act done in or about the construction, maintenance, enlargement, operation, superintendence, or management of an airport or other air navigation facility."~~

Section 2. Section 16-1802, R.C.M. 1947, is amended to read as follows:

"16-1802. Claims to be itemized -- time for presenting. No account must be allowed by the board unless the same is made out in separate items, the nature of each item stated; if it is for official services for which no specified fees are fixed by law, the time actually and necessarily devoted to such service must be stated. Claims against the county shall contain the following statement: "I

certify that this claim is correct and just in all respects and that payment or credit has not been received." Claims need not be verified by affidavit. Every claim against the county, except claims arising from injury to a person or property, which are limited under provisions of Title 82, chapter 43, as amended, must be presented within a year after the last item accrued."

Section 3. Section 17-205, R.C.M. 1947, is amended to read as follows:

"17-205. In actions other than contract. In an action for the breach of an obligation not arising from contract and in every case of oppression, fraud, or malice, interest may be given, in the discretion of the jury. This section does not apply in actions for recovery of damages arising from injury to a person or property brought against a governmental entity under Title 82, chapter 43, as amended."

Section 4. Section 32-4722, R.C.M. 1947, is amended to read as follows:

"32-4722. Advertising deemed unlawful -- notice to remove -- hearing -- appeal to district court. (1) The following outdoor advertising is unlawful:

(a) When ~~when~~ erected after June 24, 1971, contrary to this act, or erected after the effective date of this act beyond six--hundred--sixty--{660} feet of the nearest edge of the right-of-way of an interstate or primary highway outside

of an urban area with the purpose of its message being read from such ~~main-traveled~~ main-traveled way and visible from such ~~main-traveled~~ main-traveled way, unless such outdoor advertising meets the criteria of subsections (i), (ii), or (iii) of subsection (a) of section 32-4717; or

(b) When ~~when~~ a permit is not obtained as prescribed in this act; or

(c) When ~~when~~ a permittee fails to comply with a notice of violation as provided in section 32-4721.

(2) The department shall give notice in writing, either by certified mail or by personal service, to the owner or occupant of the land on which advertising believed to be unlawful is located and to the owner of the outdoor advertising structure, if the latter is known, or if unknown, by posting notice, in a conspicuous place on the structure, of its intention to remove the unlawful advertising. Within forty-five--{45} days after the notice, the owner of the land or of the structure may make a written request for a hearing before the commission to show cause why the structure should not be removed.

(3) If a hearing before the commission is not requested, or if there is no appeal taken from the commission's decision at the hearing, or if the commission's decision is affirmed on appeal, the department shall immediately remove, or cause to be removed, the unlawful

1 outdoor advertising. The owner of the structure and the
 2 owner or occupant of the land are jointly and severally
 3 liable for the costs of the removal. The department may
 4 enter upon lands bearing outdoor advertising and make
 5 examination of such advertising. The department may, upon
 6 final determination by the commission that an item of
 7 outdoor advertising is unlawful, enter upon lands bearing
 8 such advertising and remove the unlawful advertising. The
 9 ~~department incurs no liability for the entry or entries~~
 10 ~~except for injuries resulting from negligence, wantonness or~~
 11 ~~neglect."~~

12 Section 5. Section 40-4401, R.C.M. 1947, is amended to
 13 read as follows:

14 "40-4401. Waiver of defense of sovereign immunity
 15 required. All contracts or policies of casualty insurance
 16 covering state-owned properties or state risks must contain
 17 ~~therein as a part thereof~~ an agreement on the part of the
 18 insurer waiving all right to raise the defense of ~~sovereign~~
 19 ~~immunity from suit~~. No money ~~shall~~ may be paid out of the
 20 state treasury to any person, firm, or corporation, as a
 21 consideration or premium on any such policy or contract of
 22 casualty insurance unless the policy or contract contains
 23 such an agreement."

24 Section 6. Section 40-4402, R.C.M. 1947, is amended to
 25 read as follows:

1 "40-4402. ~~Sovereign~~ ~~immunity~~ Immunity defense
 2 prohibited when liability insured -- reduction of award to
 3 policy limits. Whenever an insurer accepts any premium,
 4 money, or other consideration from a political subdivision
 5 of the state, municipality, or any public body, corporation,
 6 commission, board, agency, organization, or other public
 7 entity for casualty or liability insurance, neither such
 8 insured nor insurer ~~shall~~ may raise the defense of ~~sovereign~~
 9 ~~or governmental~~ immunity from suit in any damage action
 10 brought against such insured or insurer, and any agreement
 11 in the insurance contract permitting the defense of
 12 ~~sovereign or governmental~~ immunity is hereby declared void.
 13 No attempt ~~shall~~ may be made in the trial of an action
 14 brought against such political subdivision of the state,
 15 municipality, or any public body, corporation, commission,
 16 board, agency, organization, or other public entity, to
 17 suggest the existence of any insurance which covers in whole
 18 or in part any judgment or award which may be rendered in
 19 favor of plaintiff. If the court ~~shall determine~~ determines
 20 that the defendant could have successfully raised the
 21 defense of ~~sovereign or governmental~~ immunity, and if the
 22 verdict exceeds the limits of the applicable insurance, the
 23 court shall reduce the amount of such judgment or award to a
 24 sum equal to the applicable limit stated in the policy."

25 Section 7. Section 75-8310, R.C.M. 1947, is amended to

1 read as follows:

2 "75-8310. School safety patrols. (1) The trustees of
3 any district or the administration of any private school
4 ~~shall have the authority to~~ may organize and supervise
5 school safety patrols for a school under their authority.
6 The purpose of school safety patrols ~~shall be~~ is to
7 influence and encourage other pupils of the school to
8 refrain from crossing public highways at points other than
9 regular crossings and to direct pupils as to when and where
10 to cross highways.

11 (2) The school safety patrol shall be formed from the
12 children of the school who are ~~nine (9)~~ years of age or more
13 or, if there are none, who are of the highest grade of such
14 school. Before any child may serve on the school safety
15 patrol, the parent or guardian of such child shall give
16 written consent for his child to serve on the school safety
17 patrol.

18 (3) No liability ~~shall attach either attaches~~ to the
19 ~~school, educational institution, governing board, directing~~
20 ~~authority, a member of the school safety patrol~~ or parent or
21 guardian, ~~or any individual, director, member of the~~
22 ~~trustees, district superintendent, principal, teacher or~~
23 ~~other school authority~~ by virtue of the organization,
24 maintenance, or operation of such school safety patrol
25 because of injuries ~~injury~~ sustained by any pupil ~~whether a~~

1 ~~member of the patrol or otherwise by reason of the operation~~
2 ~~and maintenance thereof unless that injury results from~~
3 ~~gross negligence or purposeful conduct of such person.~~

4 (4) Identification and operation of school safety
5 patrols shall be uniform throughout the state and the method
6 of identification and signals to be used shall be as
7 prescribed by the superintendent of public instruction in
8 cooperation with the Montana highway patrol.

9 (5) Any municipality, city, or town of this state may
10 provide for the training of members of the school safety
11 patrol at any authorized school patrol camp located in this
12 state and may pay the expense necessarily incurred in
13 providing such training, out of any funds available for such
14 purpose."

15 Section 8. Section 93-2815, R.C.M. 1947, is amended to
16 read as follows:

17 "93-2815. Joinder of state as defendant in certain
18 actions. In any action or proceeding brought in any district
19 court of the state of Montana affecting the title to real or
20 personal property in which the state of Montana has, or
21 claims to have, an interest or claim, the state of Montana
22 may be made a party defendant to such actions or
23 proceedings, and its rights or interests adjudicated,
24 ~~provided, however, that in no event shall any money judgment~~
25 ~~be rendered against the state of Montana in any action or~~

1 ~~proceeding-brought-under-the-provisions-of-this-act."~~

2 Section 9. Repealer. Sections 11-1305, 11-1306,
3 16-2731, 16-2732, 16-2733, 31-172, 46-243, 69-6405, and
4 75-5940, R.L.M. 1947, are repealed.

-End-